

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re:

Case No. 02-32792- DHW

Chapter 13

TATE WILLIAMS,

Debtor.

MEMORANDUM OPINION

World Investment Corp. ("WIC") filed a motion (Doc. #78) to vacate an earlier order of this court (Doc. #75) sustaining an objection to and disallowing its claim. WIC's motion was set for hearing on January 23, 2006. Present at the hearing were Carlos L. De Zayas, attorney for WIC, and David Weston, attorney for the debtor.

Jurisdiction

The court's jurisdiction in this matter derives from 28 U.S.C. §1334 and from the United States District Court for this district's general order referring all title 11 matters to this court. Further, because the issue here concerns the allowance or disallowance of a claim against the estate, this is a core proceeding under 28 U.S.C. § 157(b)(2)(B), thereby extending the court's jurisdiction to the entry of a final order or judgment.

Factual and Procedural Background

The facts are undisputed. The debtor filed his chapter 13 petition on September 10, 2002. Therein, he listed WIC as a secured creditor having a security interest in a 1999 Freightliner tractor-truck. WIC received timely notice of Williams' bankruptcy case together with notice of the January 8, 2003 claims bar date.

On October 24, 2002, WIC filed an objection to the

confirmation of Williams' chapter 13 plan (Doc. #13). Therein, WIC asserts that it is the holder of "a promissory note and security agreement evidencing a purchase money loan and perfected statutory lien on a 1999 Freightliner truck . . ." Further, the objection provides that the "[d]ebtor owes WIC \$57,683.68 as of the petition date on the note . . ." In the objection WIC complained that the debtor's plan undervalued its collateral.¹

On March 24, 2004, WIC filed a proof of claim totaling \$57,581.40. Thereafter, on August 23, 2004, the trustee filed an objection (Doc. #55) to the unsecured portion of WIC's claim.² Trustee contended that the claim was late filed. Pursuant to this court's local rules (L.B.R.. 3007-1), an order (Doc. #62) entered sustaining trustee's objection when WIC did not object or otherwise respond.

On January 20, 2005, Williams filed an objection (Doc. #71) to WIC's claim on the sole ground that the claim was late filed.³ Again, WIC failed to file a timely response, and an order (Doc. #75) entered on February 23, 2005, sustaining the objection, thereby disallowing all of WIC's unpaid claim. On December 20, 2005, WCI filed the motion to reconsider the order sustaining the debtor's objection to its claim.

Conclusions of Law

Although WIC waited 10 months after the entry of the order disallowing its claim before moving to vacate the order, relief from

¹Ultimately, the debtor amended the plan to the satisfaction of WIC, the objection was withdrawn, and the plan was confirmed.

²Under the confirmed plan, the value of the collateral securing WIC's claim was fixed at \$42,000. Therefore, the unsecured portion of its claim was \$15,581.40.

³The debtor objected to the entire \$57,581.40 claim of WIC apparently overlooking that the unsecured portion of the claim had been previously disallowed on the trustee's motion.

the order is not time barred by Fed.R.Civ.Pro. 59 or 60.⁴ Rather, motions to reconsider an order allowing or disallowing a claim against the estate are controlled by Fed.R.Bankr.Pro. 3008, which provides:

A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.

WIC acknowledges that it did not file a formal proof claim within the time allowed. WIC contends, however, that its objection to confirmation, which was filed prior to the claims bar date, constituted to an informal proof of claim. The court agrees.

A document filed by a creditor, other than a formal proof of claim under Fed.R.Bankr.Pro. 3002, may constitute an informal claim. *The Charter Company v. Dioxin Claimants (In re The Charter Company)*, 876 F.2d 861, 863 (11th Cir. 1989)(citing *In re South Atlantic Financial Corp.*, 767 F.2d 814, 819 (11th Cir. 1985). In order to constitute an informal proof of claim “the document must apprise the court of the existence, nature and amount of the claim (if ascertainable) and make clear the claimant's intention to hold the debtor liable for the claim.” *Id.* at 863.

WIC's October 24, 2002, objection to the confirmation of the debtor's plan satisfies the requirements for an informal claim. Therein, WIC avers that it is owed \$57,683.68 by the debtor as of the date of the petition and that it holds a purchase money security interest in the debtor's 1999 Freightliner truck. Further, merely by objecting to the valuation of the collateral to be paid under the plan, WIC made clear its intention to hold the debtor liable for the claim. See, also, *In re Thornlimb*, 37 B.R. 874, 876 (Bankr. D.R.I. 1984) holding that an objection to confirmation requesting valuation of

⁴Fed.R.Civ.Pro. 59 and 60 are made applicable to bankruptcy proceedings by Fed.R.Bankr.Pro. 9023 and 9024, respectively.

collateral constituted a proof of claim.

Conclusion

For these reasons a separate order will enter granting WIC's motion to vacate the February 23, 2005 disallowing its claim. The order of September 23, 2004, sustaining trustee's objection to WIC's unsecured claim, however, is unaffected by this proceeding.

Dated this the 13th day of February, 2006.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Debtor

David Weston, debtor's attorney

Carlos L. De Zayas, WIC's attorney

Curtis C. Reding, chapter 13 trustee